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EXAMINER

GOTTSCHALK, MARTIN A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/500,181	Applicant(s) JOHNSON, PERRY L.	
	Examiner MARTIN A. GOTTSCHALK	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-15 have been examined. All are as per the originals.

Claim Rejections - 35 USC §101

2. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-15 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

4. Based on Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions, §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (the Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)).

If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. §101. In this particular case, regarding the first test, in performing the steps of the claimed subject matter, there is no requirement that a machine be used, thus the claims are not considered sufficiently tied to another

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statutory class. Regarding the second test, since the claimed subject matter may be performed using only human intelligence, the steps do not sufficiently transform the underlying subject matter to be statutory.

Note: None of the claims have been amended. They claim rejections below are reproduced here as per the original for the convenience of the reader only.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooya et al (PG Pub# 2001/0034611) in view of Cirulli et al (US Pat# 5,664,183).

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A. As per claim 1, Ooya teaches a method for auditing a customer for compliance with a quality standard (Ooya: abstract), the method comprising:

reviewing a quality system for compliance with the quality standard (Ooya: [0017]);

analyzing the quality system to identify at least two improvements to be made based on knowledge and judgment of an auditor (Ooya: [0062], i.e. "reduce the number of employee work hours" and "reduce the costs");

Ooya fails to explicitly teach

communicating the at least two improvements to the customer.

However this feature is taught by Cirulli, who teaches the use of collaboration tools ("groupware") for distribution of quality audit materials among a group of users (Cirulli: col 8, ln 55 to col 9, ln 15; Figs 4-6, note in particular the steps utilizing "Lotus Notes").

It would have been obvious at the time of the invention to one of ordinary skill in the art to incorporate the teachings of Cirulli into the method of Ooya with the motivation of reducing the time for the collection and integration of documentation of ISO 9000

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requirements generated by groups of people within an organization (Cirulli: col 1, Ins 58-65).

Note: The motivation to combine the Ooya and Cirulli in subsequent claim rejections is the same as provided for claim 1.

B. As per claims 2-4, Ooya fails to explicitly teach these features, however, they are taught by Cirulli who teaches

(claim 2) the method of claim 1 wherein the step of analyzing comprises analyzing complexity of the quality system to identify redundancies (Cirulli: Fig 2; col 4, Ins 10-40).

(claim 3) the method of claim 2 wherein at least one of the at least two improvements includes a method to reduce the complexity to eliminate redundancy (Cirulli: Fig 2; col 4, Ins 10-40).

(claim 4) the method of claim 2 wherein at least one of the at least two improvements includes clarifying the quality standard (for all three claims, see Cirulli: Fig 2; col 4, Ins 10-40 where the group editing process is considered to be a type of complexity reduction and elimination of redundancy. In other words, the initial group responses are relatively complex and the agreed upon, edited version is concise, having eliminated redundancies among other things in the group responses).

C. As per claim 5, Ooya fails to teach this feature however Cirulli teaches the method of claim 1 further comprising

requiring auditors to participate in periodic training sessions (Cirulli: Fig 2; col 4, lns 10-40, reads on “educational exercise”).

D. As per claim 6 and 7, Ooya teaches the method of claim 5 wherein the auditors participate via

(claim 6) video conference (Ooya: [0017]).

(claim 7) teleconference (see Ooya: [0017]).

Ooya fails to teach participating in training by video and teleconference. However, Cirulli, as per claim 5, teaches participation in auditor training sessions. The conferencing techniques of Ooya could have been combined with the training of Cirulli by one of ordinary skill in the art at the time of the invention.

E. As per claims 8 and 9, Ooya fails to teach these features however Cirulli teaches the method of claim 5 wherein the training is directed to

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(claim 8) the quality standard (Cirulli: Fig 2; col 4, Ins 10-40)

(claim 9) interpersonal skills (Cirulli: Fig 2; col 4, Ins 10-40, where the group editing process is a type of training in interpersonal skills).

F. As per claim 13, Ooya teaches the method of 1 further comprising:

gathering technical information related to a particular industry classification prior to an audit; and requiring an auditor to demonstrate an understanding of the technical information related to the particular industry prior to the audit (Ooya: [0017], clarifying questions are asked subsequent to the preliminary audit).

G. As per claim 14, Cirulli teaches the method of 13 wherein the step of requiring an auditor to demonstrate an understanding of the technical information includes requiring the auditor to pass a test covering the technical information (Cirulli: col 4, Ins 52-55).

H. As per claim 15, Ooya discloses the method of 13 further comprising

providing an assistant auditor to accompany a primary auditor wherein at least the assistant auditor is required to demonstrate an understanding of the technical information (Ooya: [0062], i.e. "education sessions for improving...techniques of auditors...).

8. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooya in view of Cirulli as applied to claim 1 above, and further in view of Pavone (PG Pub# 2003/01911687).

A. As per claim 10. Cirulli teaches the method of claim 1 further comprising:

providing technical and/or engineering training for the sales representatives prior to in-person customer solicitation (Cirulli: col 2, reads on "education").

Ooya and Cirulli fail to teach

recruiting sales representatives with commissioned sales experience to solicit customers,

However, this feature is taught by Pavone (Pavone: [0016]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the teachings of Ooya and Cirulli with the teachings of Pavone with the motivation of automating the recruitment of personnel (Pavone: [0018]).

Note: The same motivation applies for claims 11 and 12.

B. As per claim 11, Pavone teaches the method of 10 wherein

the technical and/or engineering training is provided at a central location for a predetermined period of time during which any customer solicitation is performed telephonically (Pavone: [0044]; Fig 4).

C. As per claim 12, Pavone teaches the method of 10 wherein the step of recruiting comprises

recruiting sales representatives with at least four years of commissioned sales experience (Pavone: [0040]).

Response to Arguments

9. Applicant's arguments filed 07/03/2008 have been fully considered but they are not persuasive. Applicant presents two arguments, both concerning claim 1. First, on page two of the response, Applicant appears to argue that the cited reference, Ooya, does not teach the claimed step of

“analyzing the quality system to identify at least two improvements to be made based on knowledge and judgment of the auditor.”

The Examiner respectfully disagrees. In addition to the cited passages, note Ooya: [0055]-[0058]; Figs 10 and 13], which teaches an auditor conducting an audit of a quality system of a customer, generating a report of the audit results, and communicating the results to the audited organization. Note in particular the teaching of a “judgment device,” such as in Fig 10. The audited organization then carries out the required improvements indicated in the audit report.

Second, on page 3 of the response, Applicant appears to argue there is no motivation to combine the cited references of Ooya and Cirulli. In response, the Examiner respectfully disagrees, and directs Applicant to the motivation provided above for claim 1 which recites

“It would have been obvious at the time of the invention to one of ordinary skill in the art to incorporate the teachings of Cirulli into the method of Ooya with the motivation of reducing the time for the collection and integration of documentation of ISO 9000 requirements generated by groups of people within an organization (Cirulli: col 1, lns 58-65).”

To re-state, the Examiner asserts that a computerized communication system such as that taught by Ooya which provides feedback to an audited organization would be made more efficient by a mechanism of distributing these results directly to the plurality of members of the organization most readily capable of implementing the identified improvements. Such a mechanism is taught by the method taught by Cirulli

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(Cirulli: col 5, lns 17- to col 9, ln 15). Such a modification of Ooya by Cirulli could eliminate intermediate steps such as the organization receiving the results centrally, then re-distributing them to the organization's members, thus improving the efficiency of the overall audit process, which is an object of the teachings of Ooya (Ooya: [0008];[0053]; [0060]).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARTIN A. GOTTSCHALK whose telephone number is (571)272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. G./
Examiner, Art Unit 3696

/Ella Colbert/
Primary Examiner, Art Unit 3696